

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Nicholas Tranto
Excise ISP/EIS Technical Coordinator

from: Excise ISP Counsel

subject: **Heavy Highway Vehicle Use Tax
Leased Vehicles Registered in Kansas**

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ISSUES

1. Vehicles subject to the highway use tax imposed by I.R.C. § 4481 are leased by a large [REDACTED] leasing company to operator-lessees in Kansas. Who is liable for the tax and required to file Form 2290, Heavy Highway Vehicle Use Tax Return?
2. If the person liable for tax is the Kansas operator-lessee, is there any support for permitting the leasing company to pay the tax and file the return?

ANSWERS

1. A person is liable for the highway use with respect to the use of a highway motor vehicle in a taxable period if the vehicle is registered in the person's name at the time of the first use of the vehicle in the taxable period. This person is also required to file Form 2290. Accordingly, the operator-lessee in whose name the vehicle is registered is liable for the tax and is required to file Form 2290.

It is our understanding that the vehicles are registered in the name of the operator-lessees. Further, under current Kansas law, there is no requirement for the vehicle to also be registered in the name of the owner-lessor (i.e., dual registration).

2. We have not been able to find any support to permit the leasing company to pay the tax and file the return with respect to the taxes due from the Kansas operator-lessees. Even if the lease provides for payment of the tax and filing of the return by the lessor, the obligation under the Code and regulations cannot be shifted. Cf., Morgan Drive Away, Inc. v. United States, 697 F.2d 1377, 1383 f.n. 7 (Fed. Cir. 1983) (such lease provisions were apparently not relevant in determining that the lessees were the taxpayers and were not entitled to a refund of the highway use taxes).

BACKGROUND

A large company in [REDACTED] leases [REDACTED] trucks to operators in various states. The company files a Form 2290 for all of the leased trucks, and pays the highway use tax for all of the trucks.

There is an ongoing audit by Vic Brown, an excise tax agent in Kansas. Agent Brown indicates that the trucks being used in Kansas are registered in the state of Kansas in the name of the operator-lessee. This statement is accepted as accurate for purposes of rendering this advice. Additionally, it is assumed that the vehicles at issue are base-plated in Kansas, and that there is no possible contention that the vehicles are also registered in [REDACTED] or another state. See, Little Audrey's Transportation Co., Inc. v. United States, 369 F. Supp. 329, 74-1 U.S.T.C. ¶ 16,132 (USDC Neb. 1974). Accordingly, Agent Brown wants to collect the highway use tax from the individual operator-lessees in Kansas and, if claims are timely filed by the leasing company, refund the tax paid by the leasing company.

DISCUSSION

I.R.C. § 4481(a) imposes a tax on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross

weight of at least 55,000 pounds, with the amount of the tax varying depending upon the weight.

I.R.C. § 4481(b) provides that the tax imposed by I.R.C. § 4481(a) shall be paid by the person in whose name the highway motor vehicle is, or is required to be, registered under the law of the state in which the vehicle is, or is required to be, registered.

Section 41.4481-2(a)(1)(i)(A) of the Highway Use Tax Regulations provides that a person is liable for the tax imposed by § 4481 with respect to the use of a highway motor vehicle in a taxable period if the vehicle is registered in the person's name at the time of the first use of the vehicle in the taxable period.

Section 41.6011(a)-1(a)(1) provides that a person that is liable for tax under § 41.4481-2(a)(1)(i)(A) must file a return for the taxable period with respect to the tax imposed by § 4481.

Section 41.4481-3(a) of regulations provides that the term "registered," when used in reference to a highway motor vehicle, includes a vehicle registered or required to be registered under the laws of any state or the District of Columbia.

Section 41.4481-3(b) of the regulations provides that any highway motor vehicle that, at any time in the taxable period, is registered both in the name of the owner of the vehicle and in the name of any other person, is considered to be registered, at such time, solely in the name of the owner of the vehicle.

It is clear that the person in whose name a vehicle is registered with the state is the person that must pay the tax and file Form 2290. The statutory and regulatory provisions use the vehicle registration process as the means of identifying the person liable for the tax. In the case of "dual registration" (i.e. registration in the names of both the lessor and the lessee), Treasury regulations require that the vehicle must be considered to be registered only in the name of the owner of the vehicle for purposes of determining who has to pay the tax. *See*, Rev. Rul. 73-509, 1973-2 C.B. 377 (owner-lessor of vehicle is considered legal owner for purpose of highway use tax even though in states that have entered into the Uniform Vehicle Registration Proration and Reciprocity Agreement (UVRP&RA) there is dual registration of the vehicle and both the owner-lessor and operator-lessee are considered to be "owners" under the UVRP&RA).

Although it is reasonable to hope that there would be uniform treatment and classification of leased trucks across the states when administering this law, that is not the case. The I.R.S. must look to the registration laws of each state to apply the statute

and regulations. This problem was succinctly summarized by a District Court in Nebraska as follows:

It is apparent that a great deal of significance attaches to the word 'registration.' Read in the abstract, the taxing statute gives the impression that there are certain definitive criteria which establish whether in any state 'registration' has been accomplished. Unfortunately, this is not so. Each state requires compliance with its own motor vehicle registration laws by every commercial vehicle which passes through the state. However, the compliance required by each state is not uniform. There are different types and amounts of licensing, fee payments and taxation throughout the various states.

Little Audrey's Transportation Co., Inc. v. United States, 369 F. Supp. at 332.

Therefore, the registration requirements of each state must be examined to determine in whose name the vehicle is registered, and whether there is dual registration in fact, or at least a dual registration requirement.. Morgan Drive Away, Inc. v. United States, 697 F.2d 1377, 83-1 U.S.T.C. ¶ 16,391 (Fed. Cir. 1983); Steel Haulers, Inc. v. United States, 316 F. Supp. 707, 70-2 U.S.T.C. ¶ 15,949 (W.D. Mo. 1970), aff'd per curiam 440 F.2d 1176 (8th Cir. 1971). Dual registration is significant because, if there is dual registration, then the owner-lessor is the taxpayer.

KANSAS

Two cases were found which discussed registration in Kansas in the context of the highway use tax. Morgan Drive Away, 697 F.2d 1377 (Fed. Cir. 1983); Grain Belt Transportation Co. v. United States, 465 F.2d 1202, 72-2 U.S.T.C. ¶ 16,054 (10th Cir. 1972). These cases stand for the proposition that it is the operator-lessee that is the taxpayer since the registration was in the name of the operator-lessee. Although Kansas has amended its statutes since these cases were decided, the amendments did not significantly change the relevant and operative provisions of the registration scheme which supported these court holdings.

Section 8-126(a), Kansas Statutes Annotated, provides, in part, as follows:

(n) "Owner" means a person who holds legal title of a vehicle, or . . . in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; . . . then such . . . lessee . . . shall be deemed the owner for purposes of this act.

Section 8-127(a), Kansas Statutes Annotated, provides, in part, as follows:

(a) Every owner of a motor vehicle, . . . intended to be operated upon any highway in this state, whether such owner is a resident of this state or another state, or such motor vehicle . . . is based in this state or another state shall, before any such vehicle is operated in this state, apply for and obtain registration in this state . . .

Under these statutory provisions, the operator-lessee is required to register the vehicle in the operator-lessee's name.

Kansas also has registration provisions applicable to fleet vehicles engaged in interstate commerce. These provisions are in lieu of the registration requirements under section 8-127, K.S.A.

Section 8-1,100(h), Kansas Statutes Annotated, provides as follows:

(h) "Owner" means any person who is lawfully entitled to possession of a commercial vehicle and who has the right to control the operation of such vehicle, and in the event more than one person has the right to possession or control, the person in whose behalf the vehicle is being operated at a particular time shall be deemed the owner at that time. In the event a commercial vehicle is the subject of a lease, the lessee and operator of such vehicle, not the holder of the legal title shall be deemed the owner.

Section 8-101(a), Kansas Statutes Annotated, provides, in part, as follows:


(a) An owner engaged in operating a fleet in this state in interstate commerce may, in lieu of registration of such fleet under the provisions of K.S.A. 8-126 to 8-149, inclusive, . . . register such fleet for operation in this state upon payment of fees prescribed by this act and the filing of an application with the division of vehicles in a manner and upon a form prescribed by the division, or in accordance with the provisions of any apportioned fleet registration agreement made by this state. The application shall be signed by the owner,

Section 8-1,111, Kansas Statutes Annotated, provides, in part, as follows:

Vehicles required to be registered as part of a fleet under the provisions of this act, which vehicles are based in the state of Kansas, shall be required to have a Kansas negotiable certificate of title or be covered by a negotiable title issued by another jurisdiction. . . . No Kansas title shall be required for a vehicle which is subject to a lease, if the lessor thereof has an outstanding negotiable title to such vehicle, issued by this state or another jurisdiction.

From the above, we conclude that the operator-lessee is the only person in whose name the vehicle is required to be registered in Kansas. Accordingly, the operator-lessee is the person liable for the tax and required to file Form 2290.

If you have any questions, please call Donna P. Leone at 412-644-3442.


EDWARD F. PEDUZZI, JR.
Associate District Counsel